

# Adult Cautioning scheme

An Adult Cautioning Scheme approved by the Director of Public Prosecutions came into force on the 1<sup>st</sup> February, 2006. The Scheme only applies to offences committed on or after the commencement date of 1<sup>st</sup> February 2006, and to persons aged 18 years and upwards. It is an alternative to the prosecution of certain persons against whom there is evidence of the commission of a scheduled criminal offence, where the prosecution of such offence is not required in the public interest.

The Schedule of Offences to which the Adult Cautioning Scheme applies is outlined in Appendix A.

Nothing in the Scheme shall interfere with the discretion of a member of An Garda Síochána to prosecute a person for an offence scheduled under the Scheme if the member believes that the application of the Scheme would not be appropriate, having regard to the circumstances of the offence or the antecedents of the person.

A number of matters need to be specifically addressed in deciding to administer a caution namely:

- (i) the public interest,
- (ii) the decision to caution,
- (iii) the views of the victim.

#### **(i) The Public Interest**

The decision to administer a caution instead of to prosecute is a serious decision to take and before it is taken it must be clear that

- (a) the offence is of a kind appropriate for consideration of a caution, and
- (b) the alleged offender is deemed to be a person suitable for consideration.

#### **(a) The Offence**

It is the circumstances in which the offence is committed as much as the ingredients of the offence itself that will be of importance. If the public interest does not require a prosecution in those circumstances, cautioning may then be appropriate.

The offences deemed appropriate for the Adult Caution are outlined in the Schedule of Offences at Appendix A. The Schedule of Offences has been approved by the Director of Public Prosecutions.

#### **(b) The Offender**

Consideration must always be given as to whether or not a caution of the person in question is in the public interest. Certain persons, for example, those without previous convictions, may be dealt with effectively and deterred from acting in a criminal manner in the future through cautioning rather than prosecution. However, the fact that the person has a criminal record or been cautioned in the past under the Juvenile Diversion Programme should not of itself mean that an Adult Caution is inappropriate. The principal purpose of the Scheme is to divert from prosecution, adults who are unlikely to re-offend. Thus, if the accused had a recent conviction or more than one conviction this would point to the person being unsuitable for adult caution but the circumstances of each case should be looked at to see if diversion is appropriate.

## **(ii) The Decision to Caution**

The effect of a formal caution should be substantial. In order to safeguard the interests of society and of the offender and to ensure a consistency of approach by An Garda Síochána, the following conditions must be met before a caution can be administered

- there must be prima facie evidence of the offender's guilt
- the offender must admit the offence
- the offender must understand the significance of a caution and
- the offender must give an informed consent to being cautioned.

It is important that the Scheme be applied in a uniform way. Therefore, the investigating member should address his mind to the application of the Scheme in relation to the case of every adult suspected of a scheduled offence. If the prosecuting member has any doubt about the suitability of the person the matter should be submitted to the District Officer/ Acting District Officer in the ordinary way.

Adult cautioning cannot be availed of in circumstances where there would be a bar to prosecution, for example, where the evidence of guilt would be inadmissible in court or where the relevant time period for the commencement of a prosecution has expired.

The District Officer or Acting District Officer shall decide whether a caution, rather than a prosecution, would be the appropriate response to the commission of an offence included in the Schedule of Offences. Alternatively a direction may be sought from the Director of Public Prosecutions.

## **(iii) Views of the Victim**

Before the offence and the offender are considered for the application of a caution, the views of any victims must, if reasonably possible, be sought. The effect on the victim of the offence in question, and, any reason advanced by him/her as to why a caution should not be applied must be carefully considered before a decision is taken on whether to prosecute or to caution. However, a caution may be appropriate even if the victim is opposed to it. In such a case it may be appropriate to refer the case to the Director of Public Prosecutions.

While an offer of compensation may be a feature which might properly support the decision to caution, the decision to administer the caution cannot be conditional upon the satisfactory completion of a specific task such as payment of compensation to the victim.

**Under no circumstances should members of An Garda Síochána become involved in negotiating or awarding reparation or compensation.**

## **The Adult Caution Procedure**

A District Officer or an Inspector acting for a District Officer shall administer an Adult Caution. A caution shall, other than in an exceptional situation, take place in a Garda Síochána Station. It must involve an undertaking in writing by the alleged offender that he/she agrees to accept a caution and will not object to the fact of its existence being recorded and made known to a court in the event of a subsequent conviction for a criminal offence.

The nature of a caution is such that it should be applied only once to an offender but it may, in the most exceptional circumstances, be appropriate to apply it to a person who has been previously cautioned.

Such exceptional circumstances may occur:

- where the subsequent offence is trivial; or
- where there has been a substantial lapse of time since the first caution so as to suggest that it may have been of real benefit.

The consent of the Director of Public Prosecutions must be obtained in all such cases.

The fact that a caution has been previously administered should be cited in court in the event of subsequent criminal proceedings against that offender. In presenting antecedents, particular care should be taken to distinguish between a caution and a conviction.

**ADULT CAUTIONING SCHEME**

**SCHEDULE OF OFFENCES**

## **Appendix A**

### **Criminal Justice (Public Order) Act, 1994**

- Section 4: Intoxication in a public place
- Section 5: Disorderly Conduct in a public place
- Section 6: Threatening, abusive or insulting behaviour in a public place
- Section 8: Failure to comply with direction of a member of An Garda Síochána
- Section 9: Wilful Obstruction
- Section 11: Entering building etc with intent to commit an offence
- Section 22: Surrender and seizure of intoxicating liquor

### **Criminal Justice (Theft and Fraud Offences) Act, 2001**

- Section 4: Theft (where the value of the property concerned is less than €1,000)

### **Intoxicating Liquor Act, 2003**

- Section 6: Offences by a drunken person
- Section 8: Disorderly conduct

### **Non-Fatal Offences Against the Person Act, 1997**

- Section 2: Assault (Assaults on a member of An Garda Síochána shall be forwarded to the Director of Public Prosecutions)

### **Criminal Damage Act, 1991**

- Section 2: Damaging Property (where the value of the property damaged is less than €1,000)
- Section 3: Threat to damage property

#### **Mission Statement:**

To achieve the highest attainable level of Personal Protection, Community Commitment and State Security.

## **Additional Scheduled Offences, commencing October 9<sup>th</sup> 2009**

### **Criminal Justice (Theft and Fraud Offences) Act, 2001**

- Section 8: Making off without payment (where the value of the payment is less than €1,000)
- Section 17: Handling stolen property (where the value of the property concerned is less than €1,000)
- Section 18: Possession of stolen property (where the value of the property concerned is less than €1,000)

### **Dublin Police Act, 1842**

- Section 14(12): Nuisances in Public thoroughfares (applies to Dublin Metropolitan (Court) District Only)

### **Intoxicating Liquor Act, 1927**

- Section 17: Persons on licensed premises during prohibited hours

### **Licensing Act, 1872**

- Section 12: Public Drunkenness

### **Summary Jurisdiction (Ireland) Amendment Act, 1871**

- Section 8: Offensive or riotous conduct in a theatre or other place of public amusement (applies to Dublin Metropolitan (Court) District only)

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